IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

Number 78-433

HIGHWAY AND CITY FREIGHT DRIVERS, DOCKMEN AND HELPERS, LOCAL UNION NO. 600, a Voluntary, Unincorporated Labor Organization, Respondent,

v.

GORDON TRANSPORTS, INC., et al., Petitioners.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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v.

GORDON TRANSPORTS, INC., et al., Petitioners.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Respondent prays that a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit entered on May 19, 1978, be denied.

CITATIONS TO OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 576 F.2d 1285 and is printed in Appendix A of Petitioner's Petition for a Writ of Certiorari,

pp. A-1 to A-13. The memorandum opinion of the United States District Court for the Eastern District of Missouri is reported at 432 F.Supp. 1326 and is printed in Appendix B of Petitioner's Petition for a Writ of Certiorari, pp. A-14 to A-21. The memorandum opinion of the Bankruptcy Court is not reported and is printed in Appendix C of Petitioner's Petition for a Writ of Certiorari, pp. A-22 to A-36.

JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on May 19, 1978. Petitioner's Petition for Rehearing, or, in the alternative, Motion for Hearing by the Court En Banc, was duly and timely filed in the United States Court of Appeals for the Eighth Circuit. Said Petition for Rehearing or in the alternative, Motion for Hearing by the Court En Banc, was denied on June 20, 1978.

The jurisdiction of this Court is envoked under 28 U.S.C. Sec. 1254(1).

QUESTIONS PRESENTED

1. Whether Highway and City Freight Drivers, Dockmen and Helpers, Local Union No. 600, a voluntary, unincorporated, labor association, is a person under Section 4(A) of the Bankruptcy Act, 11 U.S.C. 22(a) and is thereby entitled to initiate voluntary bankruptcy proceedings.

2. Whether Highway and City Freight Drivers, Dockmen and Helpers, Local Union No. 600, a voluntary, unincorporated, labor organization, is autonomous and has a separate existence independent of the International Brotherhood of Teamsters, such that Local No. 600 may file a voluntary petition in bankruptcy.

STATUTES INVOLVED

The statutes involved herein are set forth on page 3 of the Petitioner's Petition for Writ of Certiorari.

STATEMENT OF THE CASE

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, will be referred to herein as "International", and the Highway and City Freight Drivers, Dockmen and Helpers Local No. 600 will be referred to herein as "Local".

The statement of the case in the Petition for a Writ of Certiorari is substantially accurate. For purposes of this Brief in Opposition to the Petition for a Writ of Certiorari, the Petitioner's statement, excluding all of the conclusions contained therein, is adopted. In addition, Respondent sets forth the following facts:

The Local is an entity which has certain powers and privileges which exist and are not dependent upon the International. The Local has the authority to adopt its own by-laws, and is an entity possessed of self-determination insofar as requirements for eligibility for office holders, the election of officers, and the selection of members as delegates to the convention of the International, are concerned. The Local has the power to exercise its own discretion in the payment of legal fees with reference to the Local's attorney, or for the defense of the Local's officials. The Local has the power to strike, on a local basis, and the only limitation is that if there is such a strike which is not authorized by the International, no strike benefits are paid by the International's strike fund to Local members. The Local has the power to negotiate its own contract, and if the Local does negotiate its own contract, and if that contract is superior

to that of the International insofar as wages or working conditions, or the like is concerned, then there is no need for ratification of such a contract by the International. The Local union has the power to maintain and operate its own disciplinary actions against its members. The Local has the power and the privilege of depositing money in its own accounts, and it has the power and the privilege of investing in real estate and personal property, and has the power and privilege of the complete disposition of all of the monies in its accounts and may use such monies to provide loans from such accounts. Salaries, allowances, legal funds, and bonding requirements are all controlled by the Local. Intra-union political activity, the eligibility for office, nominations for office, election campaigns, and election for office in the Local are all controlled and supervised by the Local. The scheduling of general membership meetings, and the establishment of committees, and delegate selections, are controlled by the Local. The Local has the power and privilege to negotiate, execute, and administer collective bargaining agreements along with the International. All of these powers and privileges are implemented through the by-laws of the Local and are not dependent upon the International, and are independent of the International.

REASONS FOR DENYING WRIT OF CERTIORARI

The decision of the United States Court of Appeals, Eighth Circuit, although it is one of first impression, is clearly correct. The Eighth Circuit, as well as Bankruptcy Judge Brauer, set forth the issue in this case as an issue of statutory construction, rather than as an issue related primarily to the effect of the Court's ruling upon labor relations. The United States Court of Appeals for the Eighth Circuit based its opinion upon proper statutory construction. It asked whether the Union, or the Local, is an association which has any of the powers and privileges of a private corporation not possessed by individuals or partnerships within the meaning of the Bankruptcy Act, and it decided that the Local is possessed of such powers and privileges. Using basic principles of statutory construction, the United States Court of Appeals for the Eighth Circuit concluded that Section 1(8) of the Bankruptcy Act and Section 4(A) of the Bankruptcy Act do not exclude labor unions from the definition of association, or unincorporated companies, or corporations; and further, labor unions are included in such definition.

Additionally, the Second Session of the 95th Congress of the United States has before it the Bankruptcy Reform Act of 1978. In a section-by-section analysis of the report of the Committee on the Judiciary filed July 14, 1978 with reference to the Bankruptcy Reform Act of 1978, under Section 101(8) the definition of corporation, as including unincorporated associations, is reaffirmed. Senate Report No. 95-989. The section-by-section analysis, specifically states " 'unincorporated association' is intended specifically to include a labor union, as well as other bodies that come under that phrase as used under current law."

Therefore, because the decision of the United States Court of Appeals for the Eighth Circuit is clearly correct, and because

there are no conflicting decisions from other Circuits of the United States Court of Appeals, and further because a section-by-section analysis manifesting the proposed intent of the Congress of the United States as that intent is manifested by the Committee on the Judiciary's Report on the Bankruptcy Reform Act of 1978, the issue of whether or not a labor union is a person who is entitled or should be entitled to take bankruptcy is settled, and should not be heard by this Court.

ARGUMENT

I

The United States Court of Appeals for the Eighth Circuit in its decision is clearly correct in holding that the Local is a "person" under the Bankruptcy Act. In vacating the judgment of the District Court, the Eighth Circuit Court of Appeals refers to Section I of the Act, 11 U.S.C. 1(23) wherein "person" is defined as a "corporation" and Section 1(8) defining "corporation" wherein "unincorporated companies" and "associations" are included within the definition of the term "corporation".

In tracing the history of the Act, the Court first states that the definition of the term "corporation", and the term "association" remain substantially unchanged since the 1926 amendments of the Act. *Hecht v. Malley*, 265 U.S. 144, 157 (1924), quoting 1 ABB. Law Dict. 101 (1879). See also *In Re Poland Union*, 77 F.2d 855, 856 (2d Cir. 1935).

The case of *United Mine Workers v. Coronado Coal Company*, 259 U.S. 344, 392 (1922), which held that a union, such as the Local in the instant case, has power and privileges of a private corporation, and as such is a distinct entity capable of being sued in Federal Court, is cited by the Eighth Circuit Court of Appeals as the highest authority that a union is an association for purposes of the Bankruptcy Act.

The case of *United States v. White*, 322 U.S. 694 (1944), is also cited by the Eighth Circuit Court of Appeals as the highest authority that a labor union has the powers and privileges of a private corporation.

After holding that the structure of a local labor union comports with the definition of "corporation", insofar as the Bankruptcy Act is concerned, the United States Court of Appeals for the Eighth Circuit in its opinion herein then turns to the Bankruptcy Act, and states, "thus, under Federal law, a union undeniably possesses some of the unique powers or privileges of a private corporation." Petition for Writ of Certiorari (Petitioners Brief, Appendix A, p. A-6) Having decided that a local labor union does possess some of the powers and privileges of a private corporation, the Circuit Court of Appeals then turned to the question of statutory construction. In doing so, the Court clarifies the question of statutory construction as follows:

> Basic principles of statutory construction lends support to a broad construction of the definition of a corporation under Section 1(8) of the Act. Section 1(8) uses the word "includes" when setting out the types of organizations that come within the definition rather than the word "means". When a statute is phrased in this manner, the fact that the statute does not specifically mention a particular entity (in this case, labor unions) does not imply that the entity falls outside of the definition. See *Pfizer, Inc. v. Government of India-U.S.*, 98 S.Ct. 584, 587-88 (1978); *Helvering v. Morgan's Inc.*, 293 U.S. 121, 125 n.1 (1934).

The Court of Appeals for the Eighth Circuit then held that "a union is not excluded by the literal language of Section 4(a) from filing a voluntary petition in bankruptcy", stating that the normal rule of construction is that where words of exception are used, they are to be strictly construed to limit the exception, the Eighth Circuit quoted words of the Second Circuit interpreting Section 4(a) of the Bankruptcy Act as follows:

> "When the words create a general inclusionary category, there is greater reason, perhaps, to except a literal meaning in the absence of any particular purpose which contradicts it. When the statute is couched in terms of an exception, however, the task is somewhat different, for in the case of an exception we can hardly assume that excluding a particular category from a general class was utterly without purpose. If we find that there was a legislative purpose for the general exception which does not fit the narrower exception at issue, a Court may justifiably conclude that the exception at issue is without the statute. Thus, the normal rule of construction is that where words of exception are used, they are to be strictly construed to limit the exception."

Israel-British Bank (London) Ltd. v. Federal Deposit Insurance Corp., 536 F.2d 509, 512-12 (2d Cir.), cert. denied, 429 U.S. 978 (1976).

The Eighth Circuit Court of Appeals pointed out that any "person" except municipal, railroad, insurance, aand banking corporations and building and loan associations is entitled to the benefits of voluntary bankruptcy. There have always been excepted out of the law certain corporations or entities, such as municipal, railroad, insurance or bank corporations on the theory that all of those corporations partook either of public or quasi-public nature; that this did not warrant their estates being adjudicated through bankruptcy proceedings, and it was wiser to hold them exempt from the law than to permit them to be thrown into bankruptcy by either voluntary or involuntary proceedings.

The Eighth Circuit Court of Appeals opinion herein, then chronologically reviewed the history of the Bankruptcy Act. Reasoning contrary to the District Court herein, the Eighth Circuit held that since no express history was present to indicate the term union was to be excluded, therefore, the term

"unincorporated company or association," as that term is used in the Bankruptcy Act, includes a labor union. The Eighth Circuit answered the District Court's contention that because a labor union is not a "monied, business or commercial corporation" in the usual sense, it is not entitled to the benefits of voluntary bankruptcy. The Eighth Circuit held that whether or not an entity is a "monied, business or commercial corporation," this cannot be a controlling factor under Section 4(a) of the Bankruptcy Act. It said,

> The few cases which have passed on this question indicate that Section 4(a) is not so limited. See, E.G., *in re Allen University*, 497 F.2d 346, 348 (4th Cir. 1974); *in re Philadelphia Consistory Sublime Princess Royal Secret, 32nd Ancient Accepted Scottish Rite*, 40 F.Supp. 645, 658 (E.D. Pa. 1941); *in re Michigan Sanitarium & Benevolent Association*, 20 F.Supp. 979, 985 (E.D. Mich. 1937), appeal dismissed, 96 F.2d 1019 (6th Cir. 1938); *in re Elmsford Country Club*, 50 F.2d 238, 239 (S.D. N.Y. 1931). Petition for Writ of Certiorari, Brief, Appendix A, p. A-11.

The Court of Appeals then pointed out that the recognized authority and treatise in Bankruptcy Law, Collier, reads:

> Subdivision b (of Section 4) specifically states what classes of corporations are included within its terms. As the definition of "corporation" in Section 1(8) is broad enough to include many unincorporated bodies, the confusing language "unincorporated company" employed in the former Act has been omitted. Charitable and even eleemosynary unincorporated groups, though within the definition of "corporation", are not subject, however, to involuntary bankruptcy under the terms of the subdivision, since they are not monied, business or commercial corporations. 1 Collier, Section 4.14, at 611, as quoted in the opinion of the Court of Appeals, Petition for a Writ of Certiorari, Petitioner's Brief, Appendix A, p. A-11.

The position of Petitioner, much belabored in the proceedings in this case, is that public policy reasons militate against the inclusion of the union within Section 4(a) of the Bankruptcy Act. The District Court did not address these considerations. The Court of Appeals for the Eighth Circuit ruled this position of Petitioner by stating:

> We find the policy based arguments unavailing here. Unless some overriding principle of public policy is shown to exist which demonstrates that the legislative purpose of the Act would be circumvented by our interpretation of the Act, these arguments are not germane to the Court's statutory interpretation. We are aware of none here. Petition for Writ of Certiorari, Petitioner's Brief, Appendix A, p. A-12.

The fallacy of Petitioner's argument was cogently observed by Bankruptcy Judge Brauer when he said:

> If the availability of bankruptcy to a labor organization were shown to create strife and unrest and discord, Congress can easily and quickly exclude, by specific provision in the Act, the availability of bankruptcy to a labor organization as it has already done to various entities by Section 4 of the Act. Petition for Writ of Certiorari, Petitioner's Brief, Appendix C, p. A-34.

Wih reference to the public policy argument of Petitioners, with reference to the question of statutory construction, and finally with reference to the question of the intent of Congress, the Bankruptcy Reform Act of 1978, presently before the Congress of the United States, and the report of the Committee of the Judiciary on that Act, are of particular importance. Section 101(8) of the Bankruptcy Act of 1978 presently before Congress defines "corporations" in such a way as to include "unincorporated companies or associations". The report of the Committee of the Judiciary on the Bankruptcy Reform Act of

1978 includes a section-by-section analysis of the Act, states as follows:

> The definition of "corporation" in paragraph (8) is similar to the definition in current law, section 1(8). The term encompasses any association having the power or privilege that a private corporation, but not an individual or partnership, has; partnership associatioins organized under a law that makes only the capital subscribed responsible for the debts of the partnership; joint-stock company; unincorporated company or association; and business trust. "Unincorporated association" is intended specifically to include a labor union, as well as other bodies that come under that phrase as used under current law . . . Report No. 95-989, A Report from the Committee on the Judiciary, Report to Accompany S-2266 Senate Reports 95th Congress, 2nd Session July 14th (Legislative day, May 17), 1978, Title 2-Bankruptcy Chapter 1, p. 22.

The foregoing clarifies specifically the intent of the Committee on the Judiciary as to the status of labor unions. Labor unions are specifically included in the definition of "corporation", as they are specifically included in the term "unincorporated association". By such specific inclusionary language, the Committee on the Judiciary for the 95th Congress has eliminated any possible doubt, as to the status of labor unions, and the question of whether or not labor unions are "persons" entitled to seek economic relief under the Bankruptcy Law.

II

In their Petition for a Writ of Certiorari, Petitioners depict the ruling of the Eighth Circuit Court of Appeals as being cursory in its disposition of the issue of whether the Local has an autonomous legal existence enabling it to file bankruptcy under Section 4(8). Petition for Writ of Certiorari, Petitioner's Brief,

p. 15. At the time of the filing of the original suit in the United States District Court, upon which the massive judgment of Petitioners was entered, and which precipitated the Local's voluntary bankruptcy, Petitioners were not concerned with the question of whether or not the local union was autonomous. This was equally true when Petitioners filed the necessary papers to garnish the Local's money, and dues collected from Local members. The Petitioners have clearly raised this issue only as an afterthought, and subsequent to the Local's voluntary bankruptcy. It is further suggested that the only reason the issue has ever been developed, is because the Local is unequivocally insolvent, whereas the opposite is true of the International.

After a dissertation about the National Master Freight Agreement, Petitioners' opinion of its significance, and Petitioners' opinion of how the National Master Freight Agreement is negotiated by the International, Petitioners conclude:

> In light of the foregoing, it is crystal-clear that the collective bargaining agreement upon which Petitioners originally sued and ultimately obtained their judgments is not, in any way, a local union contract; rather, it is, in all respects, a contract of the International and its entire membership. (Petition for Writ of Certiorari, Petitioner's Brief, p. 16.)

Petitioners failed to mention that the International is not a party to the National Master Freight Agreement, but it is rather, the Local union who is the signatory party to such agreement. If the International had been such a party, it would then have become an indispensable party to the cause of action for the violation of the National Master Freight Agreement, upon which Petitioners' massive judgment was based.

Respondent has set forth in its Statement of Facts various powers and privileges which the local union possesses, and which powers and privileges are in the nature of powers and privileges of a private corporation, and are those which are

not possessed by individuals. These facts, which are heretofore set forth, together with Petitioners' own prior actions, indicate that the Local is much "more than a fiction, and at most, a division or appendage to assist the International in carrying out its purposes", as Petitioners now belatedly argue. (Petition for Writ of Certiorari, Petitioner's Brief, p. 17) The Local's right to deposit money in its "corporate" name, its ability to invest in real estate and personal property, in its "corporate" name, and its ability to control the disposition of the monies in its own "corporate" depository, are powers and privileges of a private corporation, and clearly demonstrate that the Local is autonomous. After obtaining their massive judgment, and when Petitioners garnished the Local's money, they were not concerned that any of these funds might belong to the International. Clearly, at the time of these actions, the Petitioners' position was that the Local and the Local's funds were separate, distinct, and autonomous from the International.

Federal labor law legislation established distinctions between local and International unions in such a manner as to recognize that a Local and its International are separate and autonomous legal entities. 29 U.S.C. 152(5) defines "labor organizations" and 29 U.S.C. 158, uses the term "any labor organization" and establish the autonomy of International from Local. 29 U.S.C. 159(a) makes the Local the exclusive bargaining agent for employees of an appropriate unit. 29 U.S.C. Subchapter IV (Trusteeships) establishes a separate concept of International from that of Local. 29 U.S.C. 481 distinguishes Local from International regarding election of officers and in particular regarding terms of office.

The Federal case law also recognizes and affirms that the Local and the International are separate, distinct, and autonomous legal entities. *Keck v. Employees Independent Association*, 378 F.Supp. 241, delved into the intent of Congress regarding Section 301 of the Labor Relations Act. The Court in *Keck* held that Section 301 applied to suits between Local

and International unions, concerning union constitutional situations, and where a dispute may concern representation and collective bargaining agreements. Accordingly, the Court in *Keck* recognized that the Local and the International are separate legal entities.

In *Hines v. Local 377* (Chauffeurs, Teamsters and Warehousemen Helpers, et al.), 506 F.2d 1153, the Court recognizes the distinction between, and the autonomy of, the Local and the International. In *Waltens v. Roadway*, 400 F. Supp. 6, the Court held that the Local union is not an agent of the International, and the International could not be responsible for or identified with the conduct of local Teamsters.

This Court denied Certiorari in *Barefoot v. Teamsters*, 424 F.2d 1001, cert. denied, 400 U.S. 950, wherein the Court of Appeals had held as a matter of law that the International Brotherhood of Teamsters' Constitution, neither established nor negated, the relationship of principle and agent, between the International and the Local. The Petitioners in the instant case are trying to say, in effect, that the Constitution of the International does establish a relationship of principle and agent between the International and the Local. This Court has already ruled that the relationship of Local and International is something more than that of the Local being merely a fiction or an appendage, or a division of the International. *Barefoot v. Teamsters*, supra. Also, see *Morgan Driveway Inc. v. International Brotherhood, etc.*, 268 F.2d 871.

Petitioners cite *International Brotherhood of Teamsters v. United States*, 275 F.2d 610, in an attempt to convince this Court that that particular decision held that the Local and International are not autonomous bodies. However, what must be pointed out to this Court as clearly distinguishing that case, is that in *International Brotherhood of Teamsters v. United States*, the Local involved was in a trusteeship which had been

imposed by the International Union. This distinction was specifically recognized in *Barefoot v. Teamsters*, supra.

The issue of whether the Local was autonomous or not autonomous, *vis a vis* the International, was extensively briefed and orally argued before the United States Court of Appeals for the Eighth Circuit, in the instant case. Though the Court ruled the issue in one paragraph, it was well advised on the status of the particular Local, and the International. It had before it, for its deliberation and study, the respective constitutions of International and Local, the labor law legislation heretofore mentioned, and the aforementioned decisions contained in the case law. The United States Court of Appeals for the Eighth Circuit specifically recognized in the instant case that the Local and the International were distinct legal entities. It further stated that its ruling herein did not prejudice the Motor Carriers' rights to relief against the International Union, and concluded:

> We find little merit to the argument that the International and the Local are not sufficiently distinct entities under the Bankruptcy Act; we hold the Local has an adequately autonomous legal existence to allow it to file separately under Section 4(a). The voluntary petition and the consequent adjudication do not prejudice the Motor Carriers' right to seek relief against the International Union on the basis of the theories noted above. Petition for Writ of Certiorari, Petitioners' Brief, Appendix A, p. A-13.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari be denied.

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